IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 119 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

COMMISSIONER OF INCOME-TAX

Versus

DILIPBHAI J KINARIWALA

Appearance:

1. INCOME TAX REFERENCE No. 119 of 1991

MR BB NAIK with MR MANISH R BHATT for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 18/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue in all four questions are referred for the opinion of this Court in respect of assessment years 1982-83 and 1983-84. Questions No.1 and 2, which are common for both the assessment years, are as under:-

(i) "Whether, the Appellate Tribunal is right in law and on facts in directing the ITO to assess only 65% of 14% share from the firm of M/s. R.J. Kinariwala and Company as taxable in the hands of the assessee ?

(ii) Whether, the Appellate Tribunal is right in law and on facts in deleting the income of the two beneficiaries from the income of the assessee included under sec. 64 (1) (i) and 64 (1)(ii) of the Income Tax Act, 1961 ?"

2. We have heard Mr. B.B. Naik learned counsel for the revenue. Though served, none appears for the respondent-assessee.

3. Mr. Naik fairly points out that the controversy raised in the aforesaid two questions is concluded in favour of the assessee by the decision of this Court in CIT vs. Sunil J. Kinariwala 211 ITR 127. We accordingly answer the aforesaid two questions in the affirmative i.e. in favour of the assessee and against the revenue.

4. For the assessment year 1982-83 there is one more question referred to this Court, which is as under:-

"Alternatively, whether the Appellate Tribunal ought not to have held on the facts and in the circumstances of the case that in respect of two beneficiaries the provisions of sec. 64 (1) (iv) and 64 (1)(v) of the Act were applicable ?"

5. Mr. Naik fairly states that the controversy raised in the aforesaid question is also concluded by the aforesaid decision of this Court in CIT vs. Sunil J. Kinariwala (supra). We accordingly answer this question also in the affirmative i.e. in favour of the assessee and against the revenue.

6. The last question referred to this Court in the present reference is for the assessment year 1983-84, which is as under:-

"Whether, the Appellate Tribunal is right in law

and on facts in directing the Income Tax Officer to allow interest under sec. 214 on excess payment of tax as determined in the revised assessment?"

7. Mr. Naik relies on the decision of the Supreme Court in Modi Industries Ltd. vs. CIT 216 ITR 759 in support of his contention that the Tribunal erred in directing the Income Tax Officer to allow interest under section 214 on excess payment of tax as determined in the revised assessment.

8. For giving the aforesaid direction to the I.T.O. to allow interest under section 214 of the Act on excess payment of tax as determined in the revised assessment, the Tribunal had relied on the decision of the Full Bench of this Court in Bardolia Textile Mills (1985) 151 ITR 389. However, in Modi Industries Ltd. vs. CIT (1995) 216 ITR 759, the Apex Court has laid down the following principles which impliedly overruled the view of this Court in the case of Bardolia Textile Mills (supra):

(i) Up to March 31, 1975, interest under section 214 is payable from the first day of April of the relevant assessment year to the date of the first assessment order. The amount on which the interest is to be paid is the amount of advance tax paid in excess of tax payable by the assessee as calculated in the regular assessment (the first assessment order). The amount on which interest was payable did not vary due to the reduction or enhancement of tax as a result of any subsequent proceeding. But with effect from April 1, 1985, while the period for which interest was payable remained constant, the amount on which the interest was payable, varied with the variation in the quantum of refund as a result of any subsequent orders.

(ii) If any tax is paid pursuant to an assessment order after March 31, 1975 (which will include tax deducted at source and advance tax to the extent the same has been retained and treated by the Income Tax Officer as payment of tax in discharge of the assessee's tax liability in the assessment order), becomes refundable wholly or in part as a result of any appellate or other order passed, the Central Government will have to pay the assessee interest on the refundable amount under section 244 (1A). For the purpose of this section, the amount of advance payment of

tax and the amount of tax deducted at source must be treated as payment of income tax pursuant to an order of assessment on and from the date when these amounts were set off against the tax demand raised in the assessment order, in other words, the date of the assessment order.

(iii) With effect from April 1, 1985, interest payable under section 214 will increase or decrease in accordance with the variation in the quantum of the excess payment of tax brought about by orders passed subsequent to the regular assessment as mentioned in sub-section (1A).

9. In view of the aforesaid principles, we answer the question referred to us by the Tribunal and set out in para 6 hereinabove in the negative i.e. in favour of the revenue and against the assessee.

10. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J)

(D.A. Mehta,J)

zgs/-